I. Announcements
   A. Welcome and Introduction of Faculty Senators and Visitors.

II. Visitors’ Reports
   A. Chancellor Peacock.
   B. Ms. Martha Marking, Early Intervention Team update.

III. Minutes
   A. Approval of March 15, 2010 Faculty Senate minutes. Available online at:
      http://www.facsen.appstate.edu/Minutes/documents/FacultySenateMinutesMarch152010Unapproved.pdf

IV. Provost’s Report

V. Committee Reports (Committee Chair’s name is in bold print)
   A. Academic Policies (Miller, McCaughey, Newmark, Sherman, W. Williams)
      No Report.
   B. Agenda Committee (Ramey, Rardin, Carpenter, W. Williams)
      No Report.
   C. Budget Committee (Anderson, Aycock, Brown, Frindethie, Geary, Short)
      No Report.
   D. Campus Planning Committee (Mercer-Ballard, Marland, Scharer)
      No Report.
   E. Committee on Committees (Rardin, Gross, Mitchem, Napiorski, Stoddard)
      No Report.
F. Faculty Handbook Committee *(Ramey, Stella Anderson, Gates, Reesman, W. Williams, Carey)*

No Report.

G. Faculty Welfare and Morale Committee *(Carpenter, Gonzales, Ulmer, Wangler, Werts)*

No Report.

H. Welfare of Students Committee *(Winn, Galloway, Horst, Jackson, Jennings, Sanders)*

No Report.

VI. **Unfinished Business**

A. Ad Hoc Grievance Review Committee’s report and recommendations for *Faculty Handbook* changes. *(Appendix A: Report and Recommendations and Appendix B: Proposed Changes to Faculty Handbook).*

VII. **New Business**

A. Results of campus elections. *(Appendix C).*

VIII. **Adjournment**
Ad-hoc Grievance Review Committee Report & Recommendations
Submitted to Faculty Senate for Consideration 4/12/2010

Committee Members
Faculty Senate Members: Stella Anderson, Rob Brown, Karen Reeseman, Wayne Williams, Wendy Winn
Additional Members: Terry Cole, Paul Gates, Hugh Hindman, Martha Marking

Our committee is recommending to the Senate several changes in the grievance process. These recommendations require changes in specific sections of ASU’s Faculty Handbook. These changes cover the following issues/areas:

1. Mediation

Mediation is currently required for all grievance cases. We are recommending that in cases of denial of promotion, tenure or reappointment, mediation should be an option but not a requirement. This change is reflected in section 3.9.3.7.

2. Representation

Currently the faculty member is not permitted to have an advocate/advisor in the Grievance Hearing. We are recommending that this policy be changed. This change is reflected in section 3.9.3.9.

3. Collegiality

Currently ASU’s Faculty Handbook makes no mention of collegiality considerations in the reappointment/promotion/tenure (R,P,T,) process. Our committee is recommending that the Handbook provide specific guidance on the use of collegiality as a criteria in R,P,T, cases. This change is reflected in sections 3.6.2.2.2 and 3.6.3.2.

4. Clarification of Impermissible Factors

The UNC Code and Policy 101.3.1 provisions identify 3 factors that are prohibited as the basis for R,P,T decisions. We are recommending that additional language from the Code be incorporated in ASU’s Handbook as it relates to these so-called impermissibles, particularly language related to personal malice. These changes are reflected in sections 3.6.2.2 and 3.6.3 (inclusive).

5. Required changes to bring ASU’s Faculty Handbook in compliance with UNC Code provisions

As is, Handbook language on grievance procedures does not comply with the provisions of the UNC Code. Most notably, a distinction between “604” and “607” grievances is required and the different processes for each delineated. Also, specific subsections of sections 3.6 and 3.9 need to be reconciled. We also address additional problems with the current Handbook language to make clear important distinctions and more clearly specify the various steps in the grievance
process. Note: We incorporated the *Handbook* changes David Larry drafted and the Senate voted to support in February, 2009. These changes are reflected in sections 3.6.3.3, 3.6.3.4 and 3.9 (inclusive).

Committee Position Statement

This position statement affirms several concerns that have emerged regarding the current operation of the Faculty Grievance Hearing Committee (FGHC) and the language of the *Faculty Handbook* that guides its procedures. Our committee was guided by concerns that (a) the current *Faculty Handbook* procedures inhibit a timely resolution of grievance cases, (b) over-legalization of the grievance process is contrary to the intent of our institution, (c) ASU’s *Faculty Handbook* currently fails in several areas to conform to provisions of *The Code*, (d) the proscription of advocates to assist faculty in a grievance hearing inhibits the fundamental equity of the process, and (e) inadmissible (impermissible) criterion should be substantially clarified.

These concerns emerge from the fundamental premise that the FGHC is an instrument of the faculty not only mandated by *The Code* but institutionalized as an integral part of the faculty governance of Appalachian State University charged with enabling the faculty to address matters that negatively impact their professional lives. Like any institutional agency, the FGHC is not a static institution but, rather, one that should remain alert to improving its mission consistent with the governing policies of Appalachian State University and The University of North Carolina System. Such is the role of the ad hoc committee to examine the grievance process. The concerns raised herein, while not the only matters that impact the grievance process, are concerns that speak to limitations in the FGHC’s ability to execute its mission and concerns that should be addressed, and if agreed to, remedied in the *Faculty Handbook*.

Timely Resolution of Grievances

Current Faculty Handbook procedures inhibit a timely resolution of a grievance. As is, a faculty member wishing to pursue a grievance (pursuant to Section 3.9.3 of the Faculty Handbook):

(a) May seek to redress the grievance informally through consultation with the Chair, Dean, and/or Provost
(b) Must meet with the Grievance Assistance Committee (GAC) for consultation and assistance yet no time frame is indicated within which this consultation should occur
(c) Must meet with all named Respondents in an effort to resolve the grievance matter – a meeting must be provided within 10 working days of the request
(d) Must submit a petition to the Chair of the Faculty Grievance Hearing Committee (FGHC) requesting a formal hearing – no time frame is indicated for FGHC response
(e) Must (if a hearing is granted) submit the grievance to formal mediation – the process is recommended to be completed within 20 working days
(f) Must (if mediation fails) proceed to a formal grievance hearing before the FGHC – the results which must be reported within 20 working days
(g) Must await a reply from the responding administrator whether the FGHC recommendation (if in favor of the faculty member) will be accepted or rejected – no time frame is indicated for administrative response
(h) If rejected, must provide a written response to the respondent – must be provided within 10 working days
(i) Upon receipt, the responding administrator must issue a final decision – must be issued within 10 working days

(j) If the decision is adverse, the faculty member may pursue an appellate action to the Chancellor and beyond

As indicated, the Faculty Handbook procedures provide for a timely process at some points and at others leaves the time frame ambiguous to the point that a “timely” process, as implied in The Code (607 D (1) (a) ) is not accorded the faculty member. Specifically, the time frames for the initial response by the FGHC, the execution of the mediation process and, most critically, the initial response to the FGHC recommendations from the respondent administrator are not prescribed, a situation antithetical to a “timely” resolution of the grievance. Specific and defined time frames must be attached to each step in the grievance process, and particularly those grievances involving promotion, tenure or reappointment decisions, which are, themselves, time-constrained by The Code and Faculty Handbook.

Over-legalization of the Grievance Process, Inconsistencies between The Code and ASU's Faculty Handbook

Both the due process requirements of disciplinary hearings (Discharge or Imposition of Serious Santions, 607 of The Code and Section 3.8 of the Faculty Handbook) and grievance hearings (Section 3.9, Faculty Handbook) affirm the ‘non-legal’ status of the process. Specifically, 3.8.3.3 affirms “The Committee shall determine its own rules of procedure. Hearings will not be bound by strict rules of evidence or other formal prescriptions such as characterize the inquiries of courts of law. Rather, the committee shall resolve all questions about relevance and reliability and sufficiency of evidence in a manner that comports with common prescriptions of reasonableness.” Similar language guides the FGHC. “The FGHC...shall determine any and all policies and procedures, not inconsistent with any restrictions in Section 607 of the UNC Code and Article VI, Sections 1 and 3 of the Faculty Constitution, necessary to carry out its responsibilities in the conduct of a grievance hearing.” Implicitly, as modeled by 3.8.3.3 above, the procedures of the FGHC are guided by its developed policy, not the rules of a court of law.

Clearly, the intention of our governing documents is that the procedures of the grievance process be guided by faculty will as delegated to the FGHC rather than by external legal rules or even the prescriptions of the university attorney. The exception, of course, is that procedures must not be inconsistent with The Code or the Faculty Constitution. Ambiguities in the present language of Handbook Section 3.9 present a potential for ‘over-legalizing’ the process to the detriment of the faculty grievant and the FGHC, neither of whom have legal counsel available to them in the Hearing process. When ambiguities arise, the FGHC expectantly consults the Provost as the official ‘interpreter’ of the Handbook who, understandably, may consult with the University Attorney. As a consequence, interpretations of the Handbook tend to be “legal” interpretations. For example, current language mistakenly proceeded from an understanding that mediation was required throughout the process and that a faculty grievant must represent him or herself. Neither is prescribed by The Code. Likewise, questions and challenges have arisen in recent hearings involving such diverse matters as the confidentiality that guided the procedure to the admissibility of testimony and the introduction of new witnesses after a hearing had begun.

Ambiguities need to be addressed and clarified throughout 3.9 and these formal policies need to be augmented by a more informal ‘procedural guide’ developed by the FGHC for use in the conduct of
hearings. Moreover, the functioning of the FGHC and the execution of the grievance process itself (as
guided by 607 of The Code and 3.9 of the Faculty Handbook) need to proceed from the clear
understanding that it is a faculty grievance process, not a legal process. Ideally, efficiency and clarity of
operation should prevail over legal complexity. Administrative limitations on that process must be
predicated upon the process being a clear violation of or contradiction to The Code or the Faculty
Handbook.

Finally, in the process of reviewing the provisions of The Code (604 and 607) and the current
Faculty Handbook, this committee determined that there were a number of inconsistencies between
provisions of The Code and the Handbook. Certainly the provisions of The Code ‘trump’ ASU’s Faculty
Handbook and revisions must be made in the Handbook such that the Handbook complies with the
provisions of The Code. Most notably, the Handbook must distinguish between 604 and 607 grievances
and clearly specify the different provisions for each type of grievance. Doing so will require significant
revisions to section 3.9 and some revisions within section 3.6.

Representation

The committee firmly believes that the current proscription of advocates to assist faculty in a
grievance hearing inhibits the fundamental equity of the process. The Code, section 607, provides that:
“Each constituent institution must decide whether to allow faculty members to have the assistance of
an attorney or other advisor at the hearing and, if so whether the advisor is permitted actively to
participate in the hearing.” While The Code discourages the involvement of an attorney at a hearing, it
leaves the active involvement of a faculty member’s advocate open. ASU’s Faculty Handbook currently
proscribes the advocacy of an attorney at a hearing and further implies that any observer/advisor to the
faculty member must not take an active part in the hearing. Aside from a rather clear objective to de-
legalize the process by excluding the active involvement of an attorney, our faculty document offers no
rationale for limiting the presentation of the case for the grievant to the faculty member exclusively.
Clearly, such representation is not proscribed by The Code.

For several reasons, the faculty member should be allowed the option of choosing a non-
attorney advocate to represent him or herself in a grievance hearing. The faculty member simply may
not possess the requisite advocacy skills required for self-representation nor the objective analysis to
formulate the most effective case. Grievance proceedings are stressful to any faculty member and
particularly when the eventual hearing comes in the wake of failed resolution meetings and mediation
efforts. Our campus is blessed with a number of faculty members who possess superior advocacy and
analytical skills who, if asked, would be effective faculty advocates in the grievance process.

Simple equity itself affirms the value of a faculty-advocate option. At our institution, a
respondent (a Chair, Dean or the Provost) individually or collectively have access to the ‘free’ services
and resources of the university attorney’s office to help evaluate a grievance case, advise on the
collection of evidence, and assist in assembling the case for the respondent. Faculty may not have the
financial resources or like assistance from private attorneys. Moreover, participating in a grievance
hearing may be a once-in-a-career experience for a faculty member while administrators may have
participated in a number of grievance proceedings. If the adversarial process is to function as it is
intended – balanced advocates on both sides are more likely to arrive at the ‘truth’ in a dispute – then
the option of a faculty member having access to a skilled faculty-advocate can only enhance that
process. Even though a faculty member has access to any member of the Grievance Assistance
Committee and, possibly, an attorney, upon entering the forum of the grievance hearing without assistance, he or she may be at a disadvantage contrary to the principles of equity which our institution affirms.

Impermissible (Inadmissible) Criterion

Both The Code (604.B – further defined at Policy 101.3.1.II.B) and ASU’s Faculty Handbook (3.6.2.2) provide that personal malice is one of the inadmissible bases for a negative personnel decision. ASU’s Handbook currently provides none of the language in The UNC Code (or Policy documents) to define personal malice. As is, personal malice as an inadmissible criterion is a problematic standard to apply. UNC Code and Policy language defining personal malice should be included in the Handbook. In doing so faculty and the Faculty Grievance Hearing Committee have clearer guidance in evaluating any question or claim concerning the role or impact of personal malice in the denial of promotion, tenure or reappointment.

The problematic nature of personal malice is exacerbated by the intrusion of the equally problematic criterion of collegiality. While collegiality is currently not specified in the Faculty Handbook as a criterion in tenure, promotion or reappointment decisions, a lack of collegiality has been advanced as a basis for negative personnel decisions and, by implication, is part of the personal malice determination. Collegiality claims may well be a pretext for the operation of personal malice. The AAUP strongly urges that any consideration of collegiality be necessarily tied to one of the traditional three criterion – teaching, scholarship and service. As such, collegiality would never serve as a ‘stand-alone’ criterion. Our committee believes that this standard should be made clear in the Faculty Handbook.
3.6.2.2 The decision to reappoint, promote or tenure a faculty member may be based on any factor(s) considered relevant to the total institutional interests, but those responsible for making the decision must consider the faculty member's demonstrated professional competence, potential for future contribution, and institutional needs and resources. A decision not to reappoint, promote or tenure may not be based upon (1)(a) the faculty member's exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution, or (b) violation of the faculty member's academic freedom as guaranteed by sections 600 and 601 of the UNC Code; (2) unlawful discrimination based upon the faculty member's race, color, national origin, religion, creed, sex, gender identity and expression, political affiliation, age, disability, veteran status, or sexual orientation; or (3) personal malice, which may be manifest in bullying or mobbing behavior.

3.6.2.2.1 Personal malice, as defined by The Code and UNC Policy Manual 101.3.1 II.B, means dislike, animosity, ill-will or hatred based on personal characteristics, traits or circumstances of an individual that are not relevant to valid University decision making. While the terms “ill-will,” “dislike,” “hatred” and “malevolence” may connote different degrees of antipathy, any significant degree of negative feeling toward a candidate based on irrelevant personal factors, regardless of the intensity of that feeling, is an improper basis for making decisions.

3.6.2.2.2 Any claim that personal characteristics impede a faculty member’s capacity to relate constructively to his or her peers, in a necessarily collegial environment, requires a determination of whether that characteristic impedes the faculty member’s job performance, as defined by the faculty member’s scholarship, service and/or teaching responsibilities. Those responsible for making recommendations for personnel decisions shall recognize that collegiality is not a distinct capacity to be assessed independently of teaching, scholarship and service. It is rather a quality whose value is...
expressed in the successful execution of these three functions. An absence of collegiality shall never, by itself, constitute a basis for denial of tenure or promotion or nonreappointment.1

3.6.3 Nonreappointment of Tenure Track Faculty Members on Probationary Term Appointments

3.6.3.1 Permissible and Impermissible Grounds for Nonreappointment. The decision whether to reappoint a faculty member when a probationary term of appointment expires may be based on any factor considered relevant to the total institutional interests, but those responsible for making the decision must consider the faculty member's demonstrated professional competence, potential for future contribution, and institutional needs and resources. A decision not to reappoint may not be based upon (1)(a) the faculty member's exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution, or (b) violation of the faculty member's academic freedom as guaranteed by sections 600 and 601 of the UNC Code; (2) unlawful discrimination based upon the faculty member's race, color, national origin, religion, creed, sex, gender identity and expression, political affiliation, age, disability, veteran status, or sexual orientation; or (3) personal malice, which may be manifest in bullying or mobbing behavior.

3.6.3.1.2 Personal malice, as defined by The Code and UNC Policy Manual 101.3.1 II.B., means dislike, animosity, ill-will or hatred based on personal characteristics, traits or circumstances of an individual that are not relevant to valid University decision making. While the terms “ill-will,” “dislike,” “hatred” and “malevolence” may connote different degrees of antipathy, any significant degree of negative feeling toward a candidate based on irrelevant personal factors, regardless of the intensity of that feeling, is an improper basis for making decisions.

Any claim that personal characteristics impede a faculty member’s capacity to relate constructively to his or her peers, in a necessarily collegial environment, requires a determination of whether that characteristic impedes the faculty member’s job performance, as defined by the faculty

member’s scholarship, service and/or teaching responsibilities. Those responsible for making recommendations for personnel decisions shall recognize that collegiality is not a distinct capacity to be assessed independently of teaching, scholarship and service. It is rather a quality whose value is expressed in the successful execution of these three functions. An absence of collegiality shall never, by itself, constitute a basis for denial of tenure or promotion or nonreappointment.¹

### 3.6.3.2 Decision not to Reappoint

The decision not to reappoint when a probationary term appointment as instructor, assistant professor or associate professor expires will be made by the Provost and Executive Vice Chancellor. Such a decision shall not be made by the Provost and Executive Vice Chancellor until that official has received the recommendations of the departmental personnel committee, the departmental chair and the dean. This decision is final. There is no administrative appeal beyond this point except as it may later be reviewed in accordance with the provisions of section 3.9.3.

### 3.6.3.3 Conference with the Dean

The dean of the faculty member’s college/school shall send the faculty member by certified mail, return receipt requested, a written notice of non-reappointment. This notice shall direct the faculty member to section 3.9 of this Faculty Handbook for information on review procedures and to this section of the Faculty Handbook regarding the right to a formal conference with the dean, and subsequently with the Provost and Executive Vice Chancellor. Within ten working days after receiving a written notice of non-reappointment, the faculty member may request in writing a private conference with the dean to discuss the reasons for non-reappointment. This request shall be granted and the conference held within ten working days after receipt of the request if possible, at which time the reasons for the decision shall be communicated to the faculty member. Within ten working days after the conference, the dean shall give the faculty member a written statement of whether the original decision remains in effect. Each such decision shall be communicated for information to the Provost and Executive Vice Chancellor. Following the conference with the dean, the faculty member may request a conference with the Provost and Executive Vice Chancellor to review reasons for non-reappointment.
3.6.3.4 Time limits for filing a formal grievance as outlined in section 3.9.3.1 will be suspended for the duration of these conferences. The faculty member may seek review of the matter in accordance with section 3.9.3 within 14 days following the conference with the Provost and Executive Vice Chancellor. If the faculty member does not file a grievance within the time allowed, the non-reappointment decision is final.

3.9 Policies and Procedures for Employment Dispute Resolution

3.9.1 Basic Principles

3.9.1.1 When there are disputes about the proper resolution of questions affecting a faculty member's employment, various University procedures may be used to review the problem at the faculty member's request.

3.9.1.2 A faculty member aggrieved about a term or condition of employment, other than a disciplinary action, is encouraged to discuss the matter informally with the departmental chair. If a satisfactory resolution is not obtained, the faculty member is encouraged to discuss the matter with the chair's superiors, up to and including the Provost and Executive Vice Chancellor. Independent of such consultation, the faculty member may invoke a grievance process that is intended to assure a comprehensive and fair assessment of the circumstances, to the end that an equitable resolution of the problem may be achieved. The proper subjects of such grievance inquiries may include, but are not necessarily limited to, reappointment, promotion, salary, permanent tenure, matters related to post-tenure review, and termination for financial exigency or program curtailment. In appropriate instances a formal hearing process may be conducted by the Faculty Grievance Committee in accordance with the requirements of section 3.9.3 of these regulations and section 604 and 607 of The Code of the University of North Carolina. Although constitutionally mandated procedural safeguards do not apply to such grievance cases, the University community separately has established appropriate safeguards by enacting these regulations.

3.9.1.3 An aggrieved faculty member may enlist the assistance of any individual or the Faculty Grievance Assistance Committee to help prepare a grievance case. The Committee exists to advise the faculty member about the preparation of the case for hearing by the Faculty Due Process Committee or the Faculty Grievance
Hearing Committee, to answer the faculty member's questions about the process of grievance, or to be available as a source of information for the faculty member during the grievance process.

3.9.1.4 All records of a grievance case hearing which relate to personnel action affecting any University employee or contain information personally identifiable to a student shall be maintained confidentially and shall be disclosed only in accordance with Chapter 126, Article 7 of the North Carolina General Statutes, and applicable federal law, including, but not limited to, the Family Educational Rights and Privacy Act of 1974, as amended (20 U.S.C. 1232g), and regulations adopted thereunder. Any failure or refusal to maintain confidentiality of records under such laws and regulations constitutes misconduct for which any University employee may be subject to disciplinary action.

3.9.2.2 The Faculty Due Process Committee shall be composed of five members and an alternate, all to be elected by the faculty. Nomination and election shall follow procedures for other at-large faculty elections. Membership of the Faculty Due Process Committee shall be composed of faculty with permanent tenure, regardless of rank. The term of office of a member of the Faculty Due Process Committee shall be three years; provided that the first election shall be for staggered terms, with two persons to be elected to three-year terms, two persons to be elected to two-year terms, and one person to be elected to a one-year term; the alternate shall be elected to a three-year term; as the respective terms of the first class of committee members expire, their successors shall be elected to regular three-year terms.

3.9.2.5 The Faculty Grievance Assistance Committee shall consist of four members who each shall have served on a Faculty Due Process Committee or a Faculty Grievance Hearing Committee, but are not currently members of the Faculty Due Process Committee or the Faculty Grievance Hearing Committee. The term of membership shall be three years; provided that the first committee members shall have staggered terms. The committee members shall be elected from among a list of interested and eligible faculty.

3.9.3 Grounds and Procedures for Review of Grievance (Non-disciplinary) Cases

3.9.3.1 A grievance may be considered pursuant to this formal hearing process only if it is based on the contention that some right or entitlement of the faculty member, derived either from University policies,
from the provisions of state or federal laws, or from commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment, has been abridged to the faculty member’s detriment. Examples would be if the decision-maker disregarded an established standard for evaluation, relied on impermissible considerations such as race or sex, or failed or refused to consult with or receive information from mandated advisory bodies. Eligible grievances thus defined include matters directly related to a faculty member's employment status and institutional relationships, e.g., decisions not to reappoint, promote or recommend permanent tenure; termination for financial exigency or program curtailment under section 3.7 of this Faculty Handbook; decisions not to grant graduate faculty status; decisions regarding merit salary increases; matters related to post-tenure review; and decisions regarding teaching assignments and other workload matters. Two types of grievances are distinguished. So-called 604 grievances involve promotion, tenure, or nonreappointment decisions and must be filed within fourteen (14) calendar days after receipt of final written notice of the decision in question (but see section 3.6.3.2.4 suspending this time limit during the pendency of conferences with the dean and Provost and Executive Vice Chancellor). Review by the Faculty Grievance Committee of 604 grievances is limited to a determination of whether the administrative action was 1) based upon an impermissible ground identified in sections 3.6.2.2 and 3.6.3.1 of this Faculty Handbook, or 2) affected by a material procedural flaw. So-called 607 grievances can involve any other matter related to the faculty member’s employment status (e.g., graduate faculty status, merit pay, workload issues, post tenure review). 607 grievances must be filed within ninety (90) days from the date the faculty member receives written notice of the grievable action. If the faculty member does not file a grievance in a timely fashion, the administrator's decision or action is final without recourse to any faculty committees, the University, or the Board of Governors.

3.9.3.2 As used herein, the term "material procedural flaw" means a departure from prescribed procedures by which decisions concerning reappointment, promotion and the conferral of permanent tenure are made, to the extent that such departure casts substantial doubt upon the validity of the challenged decision. A material
procedural flaw is one that, more likely than not, produced a decision different from that which would have resulted otherwise.

3.9.3.3 Whether a material procedural flaw occurred shall be determined by reference to those procedures that were in effect at the time the challenged decision was made. The Faculty Grievance Hearing Committee shall ask the Chancellor to certify what procedures were then in effect, if that is a disputed matter.

3.9.3.4 In grievances contesting termination of faculty employment under section 3.7 of this Faculty Handbook, the Faculty Grievance Hearing Committee’s review shall be limited to the question of whether the decision to terminate the complaining faculty member was arbitrary or capricious.

3.9.3.5 604 grievances (promotion, tenure, nonreappointment) are governed by Section 604 of the Code of The University of North Carolina, and Board of Governors Policy 101.3.1 “Review of Nonreappointment Decisions Under Section 604 of the Code.” 607 grievances are governed by Section 607 of the Code of The University of North Carolina, and Board of Governors Policy 101.3.2, “Grievances filed Pursuant to Section 607 of The Code.” The Faculty Grievance Hearing Committee (FGHC) of Appalachian State University shall hear, pursue adjustment through mediation, and advise the administration with respect to the adjustment of grievances of members of the faculty. The authority of the FGHC shall be solely to hear representations by the persons directly involved in a grievance, to pursue voluntary adjustment by the parties through mediation, and to advise adjustment by the administration when appropriate. To the extent that these procedures are determined to conflict with any of the foregoing policies, the policies shall prevail.

Grievances within the province of the FGHC shall include matters directly related to a faculty member’s institutional relationships and conditions of employment. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the FGHC.

3.9.3.5.1 The Grievance Procedure

As a first step in the grievance procedure, the faculty member may meet with a representative of the Grievance Assistance Committee (GAC). The GAC representative will notify the chair of the Faculty Grievance Hearing Committee (FGHC) of this initial contact. Before any 607 grievance petition is submitted,
the grievant must show evidence that she or he has met with the respondent(s) in an attempt to reach resolution, as specified in the paragraph below. In the case of a 604 grievance involving promotion, tenure, or nonreappointment, the faculty member is advised, but is not required, to follow the steps outlined in sections 3.6.3.2-4 of the Faculty Handbook. All documents generated pursuant to the initiation of a grievance and by any person at any subsequent stage of the grievance process become confidential personnel records and are protected as such under the applicable state statute(s).

The grievant’s request for this initial meeting with the respondent(s) should be granted as expeditiously as possible, but within 10 working days, absent written documentation to the GAC of extenuating circumstances. At the initial meeting, both the grievant and the respondent(s) may be accompanied by another person of their own choosing as an observer, although such attendees may not take part in the discussion between the grievant and the respondent(s). Attorneys are not allowed at this meeting, but both the grievant and respondent(s) may consult with attorneys prior to or following the meeting. Because confidential personnel file information is likely to be discussed at the initial meeting, the grievant and any observers must sign the document entitled "Observer(s) at Initial Meeting Concerning Grievance," included in Appendix E. This document includes the grievant's authorization of the observer[s] to hear such confidential information, and commits the observer[s] to maintain the confidentiality of such information unless the grievant subsequently authorizes disclosure.

If agreement is reached between the parties, a written document stating the terms of the resolution will be produced jointly and signed by the grievant and the respondent(s), each of whom will be provided a copy. Copies will also be delivered to the immediate supervisors of all parties involved and to the Provost and Executive Vice Chancellor, whose office will confirm within 5 working days that the terms of the resolution conform to university policy and may be implemented.

The grievance procedure stops at this point unless the respondent(s) fails to abide by the terms specified in the resolution. Under this circumstance, if the grievant has performed (or was ready and willing to perform) those of his or her obligations under the resolution that were preconditions to respondent's performance, the grievant may include the resolution attempt as part of his or her petition to the FGHC for redress. If there is no agreement, the non-resolution will be noted in writing, signed by the parties, and distributed as above.
3.9.3.5.2 If resolution of the matter is not achieved through informal discussion as required in 3.9.3.5.1, above, or as recommended in 3.6.3.2-4, the grievant will submit her or his written petition for redress to the chair of the FGHC, accompanied by a copy of any documents resulting from these meetings.

The petition will specifically name the respondent(s) against whom the grievance is directed and will set forth in full detail the nature of the grievance. It is essential that the grievant, at this stage, state her or his case as completely as possible, since this document will establish the issues to be considered by the FGHC and may not be altered or amended at a later date, except to add specific claims based on events that had not occurred or evidence that was not available on the date of the original filing.

The petition must:

(a) state the nature of the grievance;
(b) name the parties to the dispute;
(c) identify the University policy or practice, or state or federal law that allegedly was violated to the grievant's detriment;
(d) summarize the evidence that the grievant is prepared to submit in support of the contention; and
(e) affirm that all previous attempts at resolution of the dispute have failed.

3.9.3.6 With respect to 604 grievances concerning promotion, tenure, or nonreappointment, the FGHC will schedule the matter for hearing [or will direct the parties to participate in mediation as provided in Section 3.9.3.7 below], provided the grievance has been timely filed. With respect to 607 grievances on all other matters, FGHC will review the petition and, by a vote of the majority of the committee membership, decide whether the petition sets forth sufficient grounds to warrant acceptance of the matter on the facts alleged. The FGHC shall grant a hearing with respect to a 607 grievance if it determines:

(a) that the grievance is timely filed and that required preliminary attempts at dispute resolution have been pursued and have failed;

(b) that the request does contain a contention that a right or entitlement of the faculty member, conferred by University policy or practice, has been abridged; and
that the facts alleged, if established, will support that contention.

If the committee votes not to consider a 607 grievance, the matter is closed.

3.9.3.7 If a majority of the FGHC votes to accept the petition, the chair of the FGHC is responsible for providing a copy to the respondent(s) within 5 working days of its receipt. At this point, the parties to a 607 grievance are required to take part in formal mediation arranged on their behalf by the FGHC chair and the Provost and Executive Vice Chancellor. In 604 grievances (promotion, tenure, nonreappointment) mediation shall be made available at the option of the grievant.

Appalachian State University will pay the costs of bringing a mediator to campus to conduct the mediation sessions in an effort to find a mutually agreeable resolution to the conflict. The mediator must have completed specialized mediation training and be certified by the North Carolina Office of State Personnel, the UNC General Administration, or the North Carolina Administrative Office of the Courts. The mediator, found acceptable and agreed to by both parties, should not be a member of the Appalachian State University community, although outside mediators from the community or other UNC campuses may be considered.

Mediation does not entail findings of fact or involve other evidentiary procedures. Attorneys are prohibited from participating in the process or acting as observers. The mediation is to be limited to the grievant, the respondent(s) and the mediator, although the parties have the right to consult with others during recesses and before committing to any agreement. Any time limit adopted by a UNC constituent institution or prescribed by Board of Governors Policy concerning the formal resolution of UNC Code Section 607 grievances will be suspended for the duration of a mediation process being conducted pursuant to this policy. However, the parties are encouraged to use their best efforts to complete mediation within twenty (20) working days.

Mediation procedure described above modified from http://www.northcarolina.edu/content.php/hr/policies/SPADis/Appeals.htm. See also Inside North Carolina: a guide to state employment, p. 24, NC Office of State Personnel (June 2007); UNC Office of the President, Employee Mediation and Grievance Policy and Procedure, Ann W. Lemmon (January 2005).

3.9.3.7.1 If a mutually agreeable resolution is reached through mediation, a written statement will be produced by the mediator detailing the agreement and will be signed and dated by all parties to the
mediation. Any agreement proposing to obligate Appalachian State University must also be signed by an appropriate and properly authorized university official. Copies will be provided to the parties specified in 3.9.3.5.1, above. At this point, the FGHC chair will be notified by the mediator by an unelaborated written statement that the mediation was successful, and the grievance will come to an end.

3.9.3.7.2 If mediation fails, no record of the mediation will be released other than an unelaborated written statement from the mediator to the chair of the FGHC that mediation was attempted and was unsuccessful. Copies of the unelaborated written statement will be provided to the parties specified in 3.9.3.5.1, above. Under no circumstances may the mediator be called as a witness in any subsequent proceeding, nor may any statements made during mediation be used against either party in a formal grievance hearing or any other forum. The mediator will dispose of any documents used in the process.

At this point, the grievant must decide whether to pursue a formal grievance hearing. Since the FGHC has already determined that the grievant’s petition merits the committee’s consideration, the grievant’s written notification to the FGHC chair of a desire to proceed to a formal grievance hearing will be automatically granted. The grievant may end the process at any time from this point forward.

3.9.3.8 The FGHC, as a committee constituted solely of faculty and charged with hearing disputes arising out of a faculty member’s relationship with the university, shall determine any and all policies and procedures, not inconsistent with any restrictions in Section 607 of the UNC Code and Article VI, Sections 1 and 3 of the Faculty Constitution, necessary to carry out its responsibilities in the conduct of a grievance hearing.

The FGHC will be composed of nine (9) members elected by the faculty at-large: three (3) members from each of the ranks of Professor, Associate Professor and Assistant Professor. Five (5) members of the FGHC, with each rank represented on the hearing panel, will conduct hearings. At least two (2) members must be of the same rank as the grievant; the other members of the hearing panel may be apportioned in any manner consistent with the foregoing requirements of this section. If the grievant is from any rank other than those specified by 3.4.2.5, 3.4.2.6 and 3.4.2.7, or holds a part-time faculty appointment, all professorial ranks must be represented on the hearing panel.

Nomination and election shall follow procedures for other at-large faculty elections. The term of office of a member of the FGHC shall be three years; with the exception that the first election shall be for staggered
terms, with three persons, one from each rank, to be elected to three-year terms, three persons, one from each rank, to be elected to two-year terms, and three persons, one from each rank, to be elected to a one-year term. As the respective terms of the committee members expire, their successors shall be elected to regular three-year terms.

3.9.3.9 Faculty members may be allowed to be represented at a grievance hearing by an advisor-advocate of his or her choice. The use of a non-faculty attorney as either an advisor or advocate in the hearing is discouraged. Considering that this is a faculty process, no attorneys shall be present unless the faculty member chooses to have an attorney present. However, nothing in this provision should be construed to deny either faculty or respondent(s) the right to consult with an attorney at any stage in the process. Presence at the hearing is limited to the members of the FGHC, the grievant, the grievant advisor-advocate if so desired, the respondent(s) and a designated recorder. The hearing shall begin with presentation by the faculty member or faculty member’s advisor-advocate of evidence designed to support the faculty member’s contentions.

The presentation shall be limited to those matters specified in the request for a hearing on which the FGHC based its agreement to conduct the hearing or to such other matters specified in 3.9.3.5.2. FGHC members may question all witnesses presented by any party, the grievant and the respondent(s). At the conclusion of the hearing, the FGHC shall meet in closed session to consider the matter. The FGHC may consider only such evidence as was presented at the hearing and need consider only the evidence offered that it considers fair and reliable. The burden is on the aggrieved faculty member to satisfy the FGHC, by a preponderance of the evidence, that her or his contention is true. After the conclusion of the hearing, the FGHC shall complete its deliberations and produce its decision within twenty (20) working days.

3.9.3.10 In a 607 grievance, the FGHC shall transmit its report to the faculty member, the respondent(s), and the Provost and Executive Vice Chancellor. In a 604 grievance involving promotion, tenure, or nonreappointment, the FGHC shall transmit its report to the faculty member, the respondents, and the Chancellor. When the FGHC makes a recommendation unfavorable to the faculty member in a 607
the FGHC’s decision, as a determination of a body of the grievant’s peers, shall be final. When the FGHC makes a recommendation unfavorable to a grievant challenging a promotion, tenure, or nonreappointment decision, the appeal process for such a grievant is to the Chancellor, and if the Chancellor concurs in an FGHC recommendation unfavorable to the faculty member, the grievant may appeal to the Board of Governors, pursuant to 3.9.4.2, below.

3.9.3.11 If the FGHC concludes that the grievant’s contention has been established, it shall provide notice and its recommendations for corrective action to the faculty member, the respondent(s), and the Provost and Executive Vice Chancellor or the Chancellor as appropriate to the type of grievance.

3.9.3.12 The Provost and Executive Vice Chancellor or the Chancellor shall issue a written decision within 30 (thirty) calendar days after receipt of the FGHC report. This decision shall be transmitted to the grievant, the respondents, and to the FGHC. If, prior to issuing the written decision, the Provost and Executive Vice Chancellor or the Chancellor intends to reject the recommendation of the FGHC, the Provost and Executive Vice Chancellor or Chancellor shall communicate that intention to the FGHC along with the reasons and provide an opportunity for committee response before taking final action.

3.9.3.13 In a grievance, if the Provost and Executive Vice Chancellor declines to take corrective action acceptable to the grievant, the grievant may appeal to the Chancellor by submitting the FGHC report and subsequent communications with the Provost and Executive Vice Chancellor. If the Chancellor concurs in a recommendation favorable to the faculty member, the decision shall be final. If the Chancellor declines to accept a committee recommendation that is favorable to the faculty member, the faculty member may appeal the Chancellor’s decision pursuant to 3.9.4.1.

3.9.3.14 In a grievance involving promotion, tenure or nonreappointment, if the Chancellor concurs in an FGHC recommendation favorable to the faculty member, the decision shall be final. If the Chancellor declines to accept a committee recommendation that is favorable to the faculty member, the faculty member may appeal by filing a written notice of appeal with the Board of Governors pursuant to 3.9.4.2.
3.9.4 Appeal Beyond the Chancellor

3.9.4.1 With respect to a decision adverse to the faculty member in a grievance about a matter other
than a promotion, tenure, or nonreappointment decision, the line of appeal is as prescribed by Section
607 of The Code, and shall be guided by the following procedure:

(a) A grievant dissatisfied with the Chancellor's disposition of a grievance must file written
notice of appeal with the Board of Trustees, by submitting such notice to the Chancellor, within
ten (10) working days after the grievant's receipt of the decision by certified mail, return receipt
requested. The appeal to the Board of Trustees shall be to a standing committee of five (5)
members to be selected and agreed upon by the Chair of the Board of Trustees and the Chair of
the Faculty Senate. The immediate Past Chair of the Faculty Senate may advise the current chair
if the chair feels that it is necessary. The appeal shall be transmitted through the Chancellor and
be addressed to the chair of the Board of Trustees. The Board of Trustees Appeals Committee
shall base its consideration of the appeal upon the written record of the grievance. The Board of
Trustees Appeals Committee will issue its decision within 120 calendar days after receipt by the
Chancellor of the notice of appeal. The decision of the Board of Trustees Appeals Committee is
final.

3.9.4.2 With respect to a decision adverse to the faculty member in a grievance about a promotion,
tenure, or nonreappointment decision, the line of appeal is as prescribed by Section 604 D(2) of The
Code, and shall be guided by the following procedure:

If the Chancellor concurs in an FGHHC recommendation that is unfavorable to the faculty
member, the faculty member may appeal by filing a written notice of appeal with the
Board of Governors, by submitting such notice to the President, by certified mail, return
receipt requested, or by another means that provides proof of delivery, within 14 calendar
days after the faculty member's receipt of the Chancellor's decision. The notice must
contain a brief statement of the basis for the appeal. The purpose of appeal to the Board
of Governors is to assure (1) that the campus-based process for reviewing the decision was not materially flawed, so as to raise questions about whether the faculty member's contentions were fairly and reliably considered, (2) that the result reached by the Chancellor was not clearly erroneous, and (3) that the decision was not contrary to controlling law or policy. See Policy 101.3.1 for further information.
Faculty Senate
Results of At-Large Elections and College/School Elections
Spring 2010

Faculty Senate (2 Seats)
- Jill Ehnenn (ENG)
- Andy Koch (Gvmt/JS)

Faculty Assembly (2 Seats)
- Stella Anderson (COB)
- Susan Staub (A&S)

Faculty Due Process Committee ( Permanent Tenure) (1 Seat in each category)
Seat:
- Stella Anderson (COB)

Alternate:
- Rodney Duke (A&S)

Faculty Grievance Hearing Committee
Professor:
- Susan Staub (A&S)

Associate Professor:
- Jesse Taylor (A&S)

Faculty Grievance Assistance Committee (Must have served on either Faculty Due Process Committee or Faculty Grievance Hearing Committee but not current member (3 Seats)
- No candidates nominated.
- Write In Votes: Individuals have not yet been contacted to see if they would like to serve:
  Hugh Hindman (3 Votes)
  Paul Gates (3 Votes)
  Stella Anderson (2 Votes)
  Colin Ramsey
  David Domermuth
  Dean Gilbert
  Holly Thorton
  Howie Neufeld
  James Russell
  Jay Wentworth
  Margot Olson
  Michael Dale
  Sandie Gravett
  Stan Aeschleman
  Susan Staub
  Tim Harris

Faculty/Staff Benefits (1 Seat)
- Michael Kernodle (HLES)
College/School Elections:

A&S

Teaching Enhancement (1 Seat)
- Mark Vogel (ENG)

University Research Council (1 Seat in each category)
Science/Mathematics:
- Bill Bauldry (MAT)
Social Sciences:
- Denise Martz (PSY)

COB:

Teaching Enhancement (1 Seat)
- No Candidates Nominated
- Write In Votes: Individuals have not yet been contacted to see if they would like to serve:
  Robin Byerly
  Joe Daly
  Dinesh Dave
  John Dawson
  Rebecca Kaenzig
  Jim Westerman

University Research Council (1 Seat)
- David Dickinson (ECO)

COE:

Teaching Enhancement (1 Seat)
- Tracy Smith (C&I)

FAA:

Teaching Enhancement (1 Seat)
- John Stephenson (ART)

University Research Council (1 Seat)
- Ray Miller (T&D)

Music:

Teaching Enhancement (1 Seat)
- Jennifer Snodgrass